



City of Duluth
Planning Division

411 West First Street • Room 208 • Duluth, Minnesota 55802-1197
218-730-5580 • Fax: 218-730-5904 • www.duluthmn.gov

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MEMORANDUM

DATE: October 7, 2014
TO: Planning Commissioners
FROM: Steven Robertson, Senior Planner
SUBJECT: Proposed Text Amendments to the UDC

The Planning Division is recommending several additional amendments to the UDC. After these proposed text amendments are reviewed by the Planning Commission and City Council, the City will reprint a new hard copy version of the UDC, and distribute to the Planning Commission, City staff, and individuals that purchased the UDC.

Several text amendments were addressed at the public meetings held on September 9 and September 23 (off-street parking, signage, variance, and definitions). Three items remain, changes to stormwater management and a clarification to concurrent use permits, and a clarification to off-street parking requirements.

The Planning Commission is requested to review the following proposed changes.

Changes to 50-18.1.E, Storm Water Management and Erosion Control

Replace the current regulations as they relate to stormwater control. See attached memo by Tom Johnson, Project Engineer. We have also included the current UDC language, for reference.

A significant change will be to the storm water runoff volume control. Section E.3.G. clarifies the new standard (storm water volume control, not just rate control). New development must provide controls so that the volume of stormwater runoff from a proposed project will not exceed pre-development site conditions. This should not provide a significant burden to redevelopment projects (such as reusing demolishing an existing commercial structure and rebuilding a new commercial structure), but will likely be more challenging to development on sites that have had no development in the past.

Changes to 50-37.7

Clarify current language to specific that some signs may hang over the public right of way without needing a concurrent use permit.

Clarification and Changes to 50-37.7

The Planning Commission recommend changes to the minimum parking requirements (multi-family, restaurants, and banks) at the September 23, 2014, Planning Commission meeting. The Planning Division are asking for a further clarification on a parking requirement, clarifying that tandem or in-line parking is not allowed for required off-street parking spaces (unless within a garage or parking structure).

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Example Images of Tandem Parking (Internet Search)



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MEMORANDUM

DATE: September 4, 2014
TO: Interested Citizens
FROM: Tom Johnson, Project Engineer
SUBJECT: Proposed Ordinance Change

The amendments to the UDC are being made to reflect the changes in the re-issuance of the MPCA's MS4 permit. The City of Duluth is required to have a permit to discharge stormwater and therefore must comply with the new permit that was issued in August of 2013, requiring changes to the City's UDC by January 2015. The new permit has many changes from the previous permit, two of the items are related to development governed by the UDC, stormwater runoff discharge volume and total phosphorus (TP) (a pollutant found in stormwater).

Two more items have been clarified in the UDC, the first being the need for temperature control, reducing the temperature of stormwater discharge to a cold water – trout stream, this item was previously in the MPCA's Construction Activity permit. The second item is the responsibilities of a property owner to inspect and maintain their permanent stormwater management facilities. The new MS4 permit has many other items that impact the city's policy and procedures regarding stormwater management, but are separate from the UDC.

The following is a brief excerpt from the MPCA webpage.

MPCA - Stormwater Program

The surest way to improve water quality in Minnesota is to better manage stormwater. Unmanaged stormwater can have devastating consequences on the quality of lakes, streams and rivers we enjoy. Stormwater often contains oil, chemicals, excess phosphorous, toxic metals, litter, and disease-causing organisms. In addition, stormwater frequently overwhelms streams and rivers, scours streambanks and river bottoms and hurts or eliminates fish and other aquatic organisms.

To better manage stormwater across the state, the MPCA administers the requirements of the federal [Clean Water Act](#) in addition to its own State Disposal System requirements. At the MPCA, the Stormwater Program includes three general stormwater permits: the [Municipal Separate Storm Sewer Permit](#), the [Construction Stormwater Permit](#) and the [Industrial Stormwater Permit](#). Each program administers a general permit (and in some cases, individual permits) that incorporates federal and state requirements for Minnesota stormwater management.

GENERAL PERMIT Permit No: MNR040000
AUTHORIZATION TO DISCHARGE STORMWATER
ASSOCIATED WITH SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM/STATE DISPOSAL SYSTEM (NPDES/SDS) PERMIT PROGRAM
EFFECTIVE DATE: August 1, 2013 EXPIRATION DATE: July 31, 2018

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A MS4 is defined by the MPCA as:

A municipal separate storm sewer system is a conveyance or system of conveyances (roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, storm drains):

- *Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage districts, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States;*
- *Designed or used for collecting or conveying stormwater;*
- *Which is not a combined sewer; and*
- *Which is not part of a publicly owned treatment works.*

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-xxx-O

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING CHANGES TO STORM WATER MANAGEMENT AND EROSION CONTROL

The city of Duluth does ordain:

Section 1. That Section 50-18.1.E of Chapter 50 be repealed and replaced as follows:

E. Storm Water Management and Erosion Control

1. Goals and Purpose

- (a) The federal Clean Water Act (CWA) requires that municipal storm water discharges be authorized under the National Pollution Discharge Elimination System (NPDES). The city is allowed to discharge its storm water under coverage provided by a CWA Municipal Separate Storm Sewer System General Permit (MS4 Permit). As part of the requirements of the permit, the city is required to develop a Storm Water Pollution Prevention Program (MS4 Program) with specific goals requiring:
 - (i) Non-degradation of all city waters;
 - (ii) Restrictions to special designated waters in the city, including:
 - (a) Lake Superior (which is an MPCA designated Outstanding Value Resource Water with both restricted discharge and impaired water designations);
 - (b) St. Louis River (which is an MPCA designated impaired water and area of concern; and
 - (c) 16 trout streams designated by the DNR.
- (b) The goals described in the city's MS4 Program pertaining to illicit discharge detection and elimination, construction-site runoff controls, and post-construction runoff treatment are incorporated into this Chapter by reference.
- (c) The purpose of this Section 50-18.1.E is to establish regulations to comply with the federal CWA and the city's MS4 Permit and to achieve the goals stated in the city's MS4 Program.
- (d) All proposed developments shall follow the requirements in the most recent version of the City of Duluth, Engineering Guidelines for Professional Engineering Services and Developments, and the City of Duluth Construction Standards were applicable.
- (e) Refer to the Minnesota Stormwater Manual and other stormwater management publications for temporary and permanent low impact development design practices.

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2. Temporary Erosion and Sediment Controls

(a) Applicability

This Section 50-18.1.E.2 applies to all land disturbing activities within the city, except those specifically exempt in this section and those subject to a superseding or preemptive state or federal law. This section shall be deemed to supplement, but not to conflict with, the applicable provisions of the State Building Code.

(b) Requirements

All proposed development and redevelopment and all subdivision plats and re-plats shall include drainage system and temporary erosion and sediment Best Management Practices (BMPs) in compliance with the city's MS4 Program and the requirements shown in Table 50-18.1.E-1 below. Plans, engineering analysis and calculations, diagrams, drainage reports and other data shall be submitted, as required by the city engineer or designee with each development proposal or application for permit.

Table 50-18.1.E-1: Temporary Erosion and Sediment Controls				
Land Area Disturbed ►	≤ 3,000 sq. ft. ^[1]		> 3,000 sq. ft. and < 1 acre ^[2]	≥ 1 acre
Development Plan Measures Required ▼				
Temporary erosion and sediment controls to prevent any off-site migration of sediment	✓			
Site specific Erosion and Sediment Control Plan (ESCP) and ESCP Permit from city engineer			✓	✓
Site specific Storm Water Pollution Prevention Plan (SWPPP) meeting MPCA NPDES Permit requirements for Construction Activity			✓	✓
MPCA NPDES/State Disposal System Construction Activity Storm Water Permit				✓
MS4 Statement of Compliance from city engineer			✓	✓

^[1] If the city engineer determines that the proposed development is in a vulnerable area, and may cause the degradation of the waters connected to the city's storm water system, then the provisions applicable to land disturbance areas greater than 3,000 sq. ft. shall apply.

^[2] If land disturbed is within a mapped shorelands zone, an MS4 Statement of Compliance from the city engineer is also required.

(c) Authority to Waive

The city engineer has the authority to waive the requirements in Table 50-18.1.E.1 in accordance with the city's MS4 Permit, if storm water and erosion controls required by this subsection 2 are demonstrated to be technically feasible, provisions of this subsection 2 must be met to the maximum extent practicable.

3. Permanent Water Quality and Discharge Rate, Volume and Temperature Controls

(a) Applicability

- (i) This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this section and those subject to a superseding or preemptive state or

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federal law. This section shall be deemed to supplement, but not to conflict with provisions of the State Building Code.

- (ii) This section does not apply to pavement resurfacing and pavement rehabilitation projects that meet all of the following conditions;

- no new impervious surface is created,
- there is no change to the configuration of the site,
- there is no change to the land use.

(b) **General Requirements**

All proposed development and redevelopment and all subdivision plats and re-plats shall include a drainage system with storm water runoff rate, volume and temperature controls and water quality treatment in compliance with the city's MS4 Program and the requirements shown in Table 50-18.1.E-2 below. Plans, engineering analysis and calculations, diagrams, drainage reports and other data shall be submitted, as required by the city engineer with each project (referred to as the "development plan" below).

Table 50-18.1.E-2: Permanent Water Quality and Discharge Rate, Volume and Temperature Controls [See additional requirements for land in shorelands below]			
Development Plan Measures required ▼	Total New Impervious Area Created or the Impervious Area Redeveloped^{[1][2]}		
	≤ 3,000 sq. ft.	> 3,000 sq. ft. ^{[3] [4]}	
Water quality treatment	NONE	✓	
Runoff rate controls		✓	
Volume Controls		✓	
Temperature Controls ^[5]		✓	
Drainage report		✓	
Site specific SWPPP		✓	
BMP Operation and Maintenance Manual		✓	
MS4 Statement of Compliance from city engineer		✓	

^[1] The total area is the sum of both the new and redeveloped impervious areas that are part of the common plan of development or sale.

^[2] A pavement resurfacing or pavement rehabilitation project is exempt where: (a) no new impervious surface is created; and (b) no change to configuration of the site occurs; and (c) no change to land-use occurs.

^[3] An individual one-family or two-family residence (that is not part of a common plan of development) with less than 10,000 sq. ft. of disturbed area and less than 7,500 sq. ft. of new impervious area is exempt.

^[4] If the site contains an existing impervious surface area greater than one acre, the drainage report must include a determination of the current total suspended solids removal across the entire site. If the current TSS removal is below 50%, the drainage report must include an evaluation of the feasibility of increasing the TSS removal to 50% on an annual basis across the entire site.

^[5] Temperature controls are required for projects that discharge to, and are within 1 mile from a trout/cold water stream.

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(c) **Authority to Waive**

The city engineer has the authority to waive one or more of the requirements in table 50.18.1.E-2 in accordance with the city's MS4 permit, if the developer demonstrates it to be technically non-feasible AND then mitigates for the non-compliance by increasing the level treatment or control of one of the other requirements.

(d) **Shoreland Requirements**

- (i) In addition to the requirements in subsection 50-18.1.E.3(b) above, no residential development or redevelopment within a shoreland shall result in impervious surface area exceeding 25% of the lot area unless the owner (a) submits a development plan including water quality treatment and (b) obtains an MS4 Statement of Compliance by the city engineer.
- (ii) In addition to the requirements in subsection 50-18.1.E.3(b) above, no commercial, mixed use, institutional or industrial development or redevelopment within a shoreland shown on the NR-O Map shall create new impervious surface area unless the owner (a) submits a development plan including water quality treatment and (b) obtains an MS4 Statement of Compliance issued by the city engineer.

(e) **Water Quality Treatment Requirements**

Where subsection 50-18.1.E.3(b) requires that a development plan include water quality treatment, the development or redevelopment must provide at least the minimum treatment shown in Table 50-18.1.E.3.

Table 50-18.1.E-3: Water Quality Treatment Requirements (Total Suspended Solids TSS, Total Phosphorus TP)		
Development Type	New and Existing Impervious surface	Required Treatment
New	> 3,000 S.F.	No net increase of TSS/TP from predevelopment conditions.
Redevelopment	>3,000 S.F. and < 1 acre	10% reduction in impervious surface or 50% TSS removal (TP to be removed via TSS Reduction).
Redevelopment	≥ 1 acre	50% TSS removal, No net increase in TP from pre-project condition.

(f) **Runoff Rate Control**

Where subsection 50-18.1.E.3(b) requires that a development plan include runoff rate control, the development or redevelopment must be designed to provide the controls as follows. Runoff rate control is beneficial in the upper, flatter part of the watershed above the bluff line. Below the bluff line, the topography is relatively steep and storm water flows quickly to Lake Superior and the St. Louis River. This bluff line designation is show on the NR-O Map.

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The storm water rate control requirements for development and redevelopment are shown in Table 50-18.1.E-4:

Table 50.18.1.E-4: Discharge Rate Limits		
Location ►	Post-Development Peak Flow Rates at Each Discharge Point Shall Not Exceed	
Type of Activity ▼	Zone A -- Above Bluff Line	Zone B -- Below Bluff Line
New Development	75% of predevelopment peak flow rates for 10 and 100 year events; and 90% of predevelopment peak flow rate for 2 year event	Predevelopment peak flow rates for all storm events
Redevelopment	Predevelopment peak flow rates for all storm events	Predevelopment peak flow rates for all storm events

(g) Storm Water Runoff Volume Control

Where subsection 50-18.1.E.3(b) requires that a development plan include storm water runoff volume control, the development or redevelopment must be designed to provide the controls so that the volume of stormwater runoff discharged from a proposed project shall not exceed the pre-development site conditions.

(h) Storm Water Temperature Control

Temperature controls are required for development and redevelopment where subsection 50-18.1.E.3(b) specifies. Temperature controls are beneficial for trout/cold water streams, by minimizing the increase in stream temperatures from stormwater runoff from impervious surfaces that tend to be warmer than natural vegetated surfaces. The potential for the increase in temperature of stormwater runoff discharged from a proposed project shall be minimized through the use of certain BMPs and/or site design methods.

(i) General Design Criteria

- (i) New minor system drainage systems shall be designed to efficiently convey the peak discharge rates for a 10-year flow.
- (ii) New major system drainage systems shall be designed to efficiently convey the peak discharge rates for a 100-year flow.
- (iii) The 100-year rainfall event or 100-year peak flow shall be evaluated to ensure that no damage occurs to adjacent properties for all systems.
- (iv) The storm water management systems for any new or redevelopment project shall maintain at least two ft. of freeboard between the anticipated 100-year high water elevation and the minimum building opening.
- (v) Consideration may be given for treating existing untreated impervious areas diverted to the site and included in the control area for analysis if it is in the best interest of the city.

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- (vi) All impervious areas shall be considered connected and curve numbers shall not be weighted for impervious areas except under special circumstances.
- (vii) 95% of all newly added impervious surface shall have its runoff directed to the water quality treatment area. If it is impractical to direct 95% of the added impervious surface to water quality area, alternate methods may be used in combination so long as 95% is treated and all peak flow requirements are fulfilled.
- (viii) Flow shall not be diverted from one major or minor system to another major or minor system.
- (ix) When storm water management plans involve directing runoff from a site, it shall be the responsibility of the applicant to obtain from adjacent property owners any necessary easements or other property interests concerning flowage of water to a point where the storm water enters a major system.
- (x) Adequate measures shall be taken to prevent uncontrolled drainage across lot lines.

4. General Storm Water Restrictions

The City of Duluth has numerous ordinances regarding storm water runoff and the protection of the area's water resources. Please refer to the Duluth, MN - Legislative Code, Chapter 43 Article XI Stormwater Utility System, Chapter 45 Division 2 – Improvements by Private Party and Article VIII – Obstructions to Watercourses, and Illicit Discharge.

<http://library.municode.com/index.aspx?clientId=50009>

5. Ownership and Maintenance

(a) Maintenance of Temporary Erosion and Sediment Control Practices

During the period of a land disturbing activity, the person engaging in the construction shall be responsible for installing and maintaining erosion and sediment control practices. After construction is completed, the owner of the property shall be responsible for installing and maintaining erosion and sediment control practices. For the purposes of inspection during construction monitoring, the permittee shall maintain inspection logs and will make them available to the city upon request. The permittee shall retain the inspection logs for 3 years after the project is complete.

(b) Ownership of Permanent Stormwater Management Facilities

- (i) All components of the storm water management system shall be constructed, owned, operated and maintained by the developer or owner(s) to their confluence with the major system or city owned minor system.
- (ii) In the case of developments in which right-of-way is transferred to public ownership, the storm drain system within the city right-of-way shall be owned and maintained by the city. Storm water treatment facilities and ponds shall be in common space and shall be owned and maintained by the developer or the owners

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of the development. Storm water treatment facilities shall not be located in the public right-of-way.

(c) Owner Inspection, Operation and Maintenance

- (i) A stormwater management facilities operation and maintenance manual shall be prepared by an engineer for the development and approved by the city engineer.
- (ii) Storm water management facilities shall be designed to minimize maintenance and provide inspection and maintenance access.
- (iii) All facilities shall have a plan of operation and maintenance that assures continued effective removal of runoff pollutants and accumulated sediment.
- (iv) The developer or the owner(s) shall be responsible for inspection, maintenance and reporting for all non-publicly owned storm water management facilities associated with the development. Facilities shall include structural components and all non-structural components (buffer strips, swales and other stormwater management practices that were part of the approved development).
- (v) An annual inspection and maintenance report shall be submitted to the city engineer. Inspection and maintenance shall be performed on a regular basis so the stormwater management facilities function as designed, but not less than annually. Maintenance work and repairs identified in the annual report shall be completed within three month of the annual inspection.
- (vi) The inspection and maintenance of the stormwater facility shall be performed by a qualified professional and who will prepare and sign the annual inspection/maintenance report.

Copies of the inspection and maintenance records shall be maintained by the developer or owner for a period of six years. Copies of all inspection records shall be provided to the city upon request.

Definitions:

Section 2. That this ordinance shall take effect 30 days after its passage and publication.
(Effective date: xxxxx, 2014)
Approved to as form:

Attorney

PLANNING SR

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E. Storm Water Management and Erosion Control**1. Goals and Purpose**

- (a) The federal Clean Water Act (CWA) requires that municipal storm water discharges be authorized under the National Pollution Discharge Elimination System (NPDES). The city is allowed to discharge its storm water under coverage provided by a CWA Municipal Separate Storm Sewer System General Permit (MS4 Permit). As part of the requirements of the permit, the city is required to develop a Storm Water Pollution Prevention Program (MS4 Program) with specific goals requiring:
 - (i) Non-degradation of all city waters;
 - (ii) Restrictions to special designated waters in the city, including: (a) Lake Superior (which is an MPCA designated Outstanding Value Resource Water with both restricted discharge and impaired water designations); (b) St. Louis River (which is an MPCA designated impaired water and area of concern; and (c) 16 trout streams designated by the DNR.
- (b) The goals described in the city's MS4 Program pertaining to illicit discharge detection and elimination, construction-site runoff controls, and post-construction runoff treatment are incorporated into this Chapter by reference.
- (c) The purpose of this Section 50-18.1.E is to establish regulations to comply with the federal CWA and the city's MS4 Permit and to achieve the goals stated in the city's MS4 Program.

2. Temporary Erosion and Sediment Controls**(a) Applicability**

This Section 50-18.1.E.2 applies to all land disturbing activities within the city, except those specifically exempt in this section and those subject to a superseding or preemptive state or federal law. This section shall be deemed to supplement, but not to conflict with, the applicable provisions of the State Building Code.

(b) Requirements

All proposed development and redevelopment and all subdivision plats and re-plats shall include drainage system and temporary erosion and sediment Best Management Practices (BMPs) in compliance with the city's MS4 Program and the requirements shown in Table 50-18.1.E-1 below. Plans, engineering analysis and calculations, diagrams, drainage reports and other data shall be submitted, as required by the city engineer or designee with each development proposal or application for permit.

Table 50-18.1.E-1: Temporary Erosion and Sediment Controls				
Land Area Disturbed ►	≤ 3,000 sq. ft. ^[1]	> 3,000 and ≤ 10,000 sq. ft. ^[2]	> 10,000 sq. ft. and < 1 acre	≥ 1 acre
Development Plan Measures Required ▼				
Temporary erosion and sediment controls to prevent any off-site migration of sediment	✓			
Site specific Erosion and Sediment Control Plan (ESCP) and ESCP Permit from city engineer		✓	✓	
Site specific Storm Water Pollution Prevention Plan (SWPPP) meeting MPCA NPDES Permit requirements for Construction Activity				✓
MPCA NPDES/State Disposal System Construction Storm Water Permit				✓
MS4 Statement of Compliance from city engineer		✓	✓	✓

^[1] If the city engineer determines that the proposed development is in a vulnerable area and may cause the degradation of the waters connected to the city's storm water system, then the provisions applicable to land disturbance areas between 3,000 and 10,000 sq. ft. shall apply.

^[2] If land disturbed is within a mapped shorelands zone, an MS4 Statement of Compliance from the city engineer is also required.

(c) Authority to Waive

The city engineer has authority to waive the requirements in Table 50-18.1.E.1 in accordance with the city's MS4 Permit. If storm water and erosion controls required by this subsection 2 are demonstrated to be technically feasible, provisions of this subsection 2 must be met to the maximum extent practicable.

3. Permanent Water Quality and Discharge Rate Controls

(a) Applicability

- (i) This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this section and those subject to a superseding or preemptive state or federal law. This section shall be deemed to supplement, but not to conflict with provisions of the State Building Code.
- (ii) This section does not apply to pavement resurfacing and pavement rehabilitation projects where: no new impervious surface is created, there is no change to the configuration of the site, and there is no change to the land use.

(b) General Requirements

All proposed development and redevelopment and all subdivision plats and re-plats shall include drainage system and storm water runoff rate controls and water quality treatment in compliance with the city's MS4 Program and the requirements shown in Table 50-18.1.E-2 below. Plans, engineering analysis and calculations, diagrams, drainage reports and other data shall be submitted, as required by the city engineer with each project (referred to as the "development plan" below).

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Table 50-18.1.E-2: Permanent Water Quality and Discharge Rate Controls
[See additional requirements for land in shorelands below]

Development Plan Measures required ▼	Total New Impervious Area Created or the Impervious Area Redeveloped ^{[1][2]}		
	≤ 3,000 sq. ft.	> 3,000 sq. ft. and < 1 acre ^[3]	≥ 1 acre ^[4]
Water quality treatment	NONE	✓	✓
Runoff rate controls		✓	✓
Drainage report		✓	✓
Site specific SWPPP			✓
MS4 Statement of Compliance from city engineer		✓	✓

^[1] The total area is the sum of both the new and redeveloped impervious areas that are part of the common plan of development or sale.

^[2] A pavement resurfacing or pavement rehabilitation project is exempt where: (a) no new impervious surface is created; and (b) no change to configuration of the site occurs; and (c) no change to land-use occurs.

^[3] An individual one-family or two-family residence (that is not part of a common plan of development) with less than 10,000 sq. ft. of disturbed area and less than 7,500 sq. ft. of new impervious area is exempt.

^[4] If the site contains an existing impervious surface area greater than one acre, the drainage report must include a determination of the current total suspended solids removal across the entire site. If the current TSS removal is below 50%, the drainage report must include an evaluation of the feasibility of increasing the TSS removal to 50% on an annual basis across the entire site.

(c) Authority to Waive

The city engineer has authority to waive the requirements in Table 50-18.1.E-2 in accordance with the city's MS4 Permit. If storm water and erosion controls required by this subsection 3 are demonstrated to be technically feasible, provisions of this subsection 3 must be met to the maximum extent practicable.

(d) Shoreland Requirements

- (i) In addition to the requirements in subsection 50-18.1.E.3(b) above, no residential development or redevelopment within a shoreland shall result in impervious surface area exceeding 25% of the lot area unless the owner (a) submits a development plan including water quality treatment and (b) obtains an MS4 Statement of Compliance by the city engineer.
- (ii) In addition to the requirements in subsection 50-18.1.E.3(b) above, no commercial, mixed use, institutional or industrial development or redevelopment within a shoreland shown on the NR-O Map shall create new impervious surface area unless the owner (a) submits a development plan including water quality treatment and (b) obtains an MS4 Statement of Compliance issued by the city engineer.

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(e) Water Quality Treatment Requirements

Where subsection 50-18.1.E.3(b) requires that a development plan include water quality treatment, the development or redevelopment must be designed to provide the following treatment, volume reduction and pollutant removal:

(i) Treatment Requirements

The development or redevelopment must provide at least the minimum treatment shown in Table 50-18.1.E.3.

Table 50-18.1.E-3: Treatment Requirements

Development Type	New and Existing Impervious surface	Required Treatment
New	< 1 acre	The first 1-in. Water Quality Volume (WQV) of rainfall or 80% Total Suspended Solids (TSS) removal ^[1]
New	> 1 acre	The first 1-in. WQV of rainfall ^[1]
Redevelopment	< 1 acre	10% reduction in impervious surface or 50% TSS removal
Redevelopment	> 1 acre	50% TSS removal

^[1] Refer to additional requirements under Section 3(e)(iii) Pollutant Removal

(ii) Storm Water Flow Volume Reduction

Storm water flow volume reduction shall be provided to the maximum extent practicable. Refer to the Minnesota Storm Water Manual. Volume reduction techniques may include:

- (1) Infiltration into the ground;
- (2) Evaporation or transpiration;
- (3) Storage for re-use;
- (4) Enhanced infiltration swales, filter strips, or disconnected impervious area;
- (5) Other demonstrable methods that reduce volume.

(iii) Pollutant Removal

Projects able to provide volume reduction for the first one-half in. of rainfall from newly created impervious surface shall have met city pollution abatement requirements and are exempt from this paragraph. Projects that do not meet the requirements of subsection 50-18.1.E.3(ii) above are required to complete computer modeling to show that water quality treatment shall provide 85% total suspended solids (TSS) removal, and the applicant shall also be required to describe and provide additional BMPs for temperature control.

(f) Runoff Rate Control

Where subsection 50-18.1.E.3(b) requires that a development plan include runoff rate control, the development or redevelopment must be designed to provide the controls as follows. Runoff rate control is beneficial in the upper, flatter part of the watershed above the bluff line. Below the bluff line, the topography is relatively steep and storm water flows quickly to Lake Superior and the St. Louis River. This bluff line designation is shown on the NR-O Map.

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The storm water rate control requirements for development and redevelopment are shown in Table 50-18.1.E-4:

Table 50.18.1.E-4: Discharge Rate Limits		
Location ►	Post-Development Peak Flow Rates at Each Discharge Point Shall Not Exceed	
Type of Activity ▼	Zone A -- Above Bluff Line	Zone B -- Below Bluff Line
New Development	75% of predevelopment peak flow rates for 10 and 100 year events; and 90% of predevelopment peak flow rate for 2 year event	Predevelopment peak flow rates for all storm events
Redevelopment	Predevelopment peak flow rates for all storm events	Predevelopment peak flow rates for all storm events

(g) General Design Criteria

- (i) New minor system drainage systems shall be designed to efficiently convey the peak discharge rates for a 10-year flow.
- (ii) New major system drainage systems shall be designed to efficiently convey the peak discharge rates for a 100-year flow.
- (iii) The 100-year rainfall event or 100-year peak flow shall be evaluated to ensure that no damage occurs to adjacent properties for all systems.
- (iv) The storm water management systems for any new or redevelopment project shall maintain at least two ft. of freeboard between the anticipated 100-year high water elevation and the minimum building opening.
- (v) Consideration may be given for treating existing untreated impervious areas diverted to the site and included in the control area for analysis if it is in the best interest of the city.
- (vi) All impervious areas shall be considered connected and curve numbers shall not be weighted for impervious areas except under special circumstances.
- (vii) 95% of all newly added impervious surface shall have its runoff directed to the water quality treatment area. If it is impractical to direct 95% of the added impervious surface to water quality area, alternate methods may be used in combination so long as 95% is treated and all peak flow requirements are fulfilled.
- (viii) Flow shall not be diverted from one major or minor system to another major or minor system.
- (ix) When storm water management plans involve directing runoff from a site, it shall be the responsibility of the applicant to obtain from adjacent property owners any necessary easements or other property interests concerning flowage of water to a point where the storm water enters a major system.
- (x) Adequate measures shall be taken to prevent uncontrolled drainage across lot lines.

4. General Storm Water Restrictions

- (a) Applying fertilizer, pesticides or any chemicals on impervious surfaces, within any part of storm water drainage system or any drainage way, within 25 ft.

of any wetland edge or Ordinary High Water level or bank edge of any drainage course, or within any water resource buffer area is prohibited.

- (b) Sweeping, raking, blowing or otherwise placing yard waste, unless the yard waste is securely contained, in the street, ditch, gutter, storm inlet, catch basin or any part of any drainage way or other area that would allow yard waste to enter the storm drainage system is prohibited.
- (c) Yard waste segregated for pickup must be securely contained until removed.
- (d) Topsoil and erodible soil stockpiles shall be distributed within three days or covered to prevent erosion of the stockpile.

5. Ownership and Maintenance

(a) Maintenance of Temporary Erosion and Sediment Control Practices

During the period of a land disturbing activity, the person engaging in the construction shall be responsible for installing and maintaining erosion and sediment control practices. After construction is completed, the owner of the property shall be responsible for installing and maintaining erosion and sediment control practices.

(b) Ownership

- (i) All components of the storm water management system shall be constructed, owned, operated and maintained by the developer or owner(s) to their confluence with the major system or city owned minor system.
- (ii) In the case of developments in which right-of-way is transferred to public ownership, the storm drain system within the city right-of-way shall be owned and maintained by the city. Storm water treatment facilities and ponds shall be in common space and shall be owned and maintained by the developer or the owners of the development. Storm water treatment facilities shall not be located in the public right-of-way.

(c) Owner Inspection and Maintenance

- (i) Storm water management facilities shall be designed to minimize maintenance and provide maintenance access. All facilities shall have a plan of operation and maintenance that assures continued effective removal of runoff pollutants and accumulated sediment. The developer or the owner(s) shall be responsible for inspection, maintenance and reporting for all non-publicly owned storm water management facilities associated with the development. Copies of the inspection records shall be maintained by the developer or owner for a period of six years. Copies of all inspection records shall be provided to the city upon request.
- (ii) For the purposes of inspection during construction monitoring, the permittee shall submit an inspection log to the city on the first day of each month during the entire duration of construction.
- (iii) For the purposes of ongoing monitoring and maintenance after construction is complete, the owner shall conduct inspections on all non-publicly owned structural components and all non-structural components (including swales and pond areas) of the storm water management system and:
 - (1) Submit a written report approved by an engineer summarizing findings and maintenance needs;

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- (2) Submit a written report of work completed to maintain storm water facilities. Work must be completed within three months of annual inspection.

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-xxx-O

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING CHANGES RELATED TO CONCURRENT USE PERMITS

The city of Duluth does ordain:

Section 1. That Section 50-37.7 of Chapter 50 be amended as follows:

50-37.7 Concurrent Use of Streets Permit

This section applies to all applications for construction of a skywalk and to any other application requesting that the city approve the concurrent use of the street surface, right-of-way, or the air rights above the street or the land beneath the street, but shall not apply to the following:

applications for concurrent

1. use of a portion of a public sidewalk for a café, eating area, transit shelter or bench, ~~or bicycle parking area, or~~
2. an awning, canopy, marquee or wall sign extending not more than 18 inches into the public street right of way, or an awning or canopy of canvas, canvas-like material, nylon or vinyl-coated fabric extending into the public street right of way, up to the limits established by Sec. 50-27.

A. Application

An application for concurrent use of streets shall be filed pursuant to Section 50-37.1.B.

B. Procedure

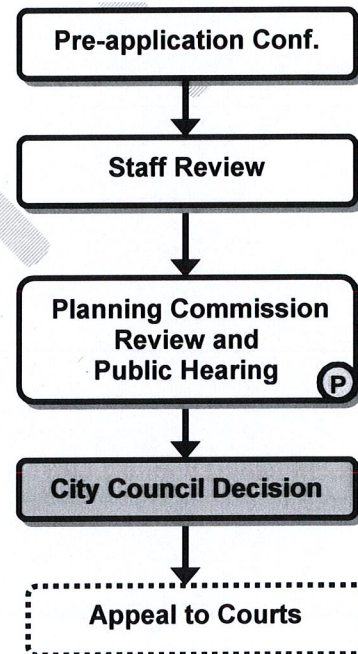
1. Review and Recommendation

The planning commission shall review the petition, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a recommendation to council based on whether the application meets the criteria in subsection C below.

2. Council Decision

Upon receipt of the planning commission recommendation, the council shall make a decision to approve, approve with modifications or deny the application, in whole or part, based on the criteria in subsection C below. The council action shall be by ordinance.

Concurrent Use of Street Permit



(P) Indicates Public Hearing Required

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C. Criteria

The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
3. No portion of a public easement proposed for use is being physically used or occupied by the public.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.
(Effective date: xxxxx, 2014)

Approved to as form:

Attorney

PLANNING SR

STATEMENT OF PURPOSE:

Action Deadline: Not Applicable

PL: 14-117

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PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-xxx-O

ORDINANCE NO _____

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING CHANGES RELATED TO REQUIRED PARKING SPACES AND VARIANCES

The city of Duluth does ordain:

Section 1. That Section 50-24.2 of Chapter 50 be amended as follows:

50-24.2 Required Parking Spaces

In all districts there shall be provided, at the time any building or structure is erected, except as provided in Section 50-24.5 Calculation of Parking Spaces the number of off-street parking spaces shown in Table 50-24-1, unless an exemption from or variation of this requirement is provided in another section of this Chapter.

Table 50-24-1: Off-Street Parking Spaces Required

Use	Requirement* (May Be Adjusted to 30% Less or 50% More)
RESIDENTIAL USES	
Dwelling, one-family	1 space per dwelling unit
Dwelling, two-family	
Dwelling, townhouse	
Dwelling, live-work	
Co-housing facility	
Dwelling, Multi-family	1.25 space per dwelling unit
Assisted living facility (elderly)	1 space per 3 habitable units
Residential care facility	1 space per 9 residential care beds, but not less than 2 spaces
Rooming house	1 space per habitable unit
PUBLIC, INSTITUTIONAL, AND CIVIC USES	
Bus or rail transit station	No requirement
Business, art, or vocational school	1 parking space for each 8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater
Cemetery or mausoleum	No requirement
Club or lodge (private)	2.5 spaces per 1,000 square feet of floor area
Government building or public safety facility	As determined by land use supervisor based on anticipated use and neighborhood impacts
Hospital	2 spaces per 1,000 sq. ft.
Medical or dental clinic	4 spaces per 1,000 sq. ft. of gross floor area
Museum, library, or art gallery	1 space per 1,000 sq. ft. of gross floor area
Nursing home	1 space per 6 beds
Park, playground, or forest reserve	No requirement
Religious assembly	1 space per 4 seats or per 100 sq. ft. in main auditorium, whichever is greater
School, elementary	1 parking space for each 10 seats in the auditorium or main assembly room or 1 space for each classroom, whichever is greater
School, middle or high	1 parking space for each 8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater

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Table 50-24-1: Off-Street Parking Spaces Required

Use	Requirement* (May Be Adjusted to 30% Less or 50% More)
University or college	2 space per 1,000 sq. ft. of office, research, and library area plus 1 space per 1 space per 125 sq. ft. of auditorium space.
Other community facility or institutional support uses not listed	As determined by land use supervisor based on anticipated use and neighborhood impacts
COMMERCIAL USES	
Adult book store	2.5 spaces per 1,000 sq. ft. of gross floor area
Adult entertainment establishment	5 per 1,000 sq. ft. of gross floor area
Agriculture	No requirement
Automobile and light vehicle repair and service	2 spaces per 1,000 sq. ft. of gross floor area
Automobile and light vehicle sales, rental, or storage	2 spaces per 1,000 sq. ft. of gross floor area
Bank	23.5 spaces per 1,000 sq. ft. of gross floor area
Bed and breakfast	1 space for manager plus 1 space per habitable unit
Building material sales	1 space per 1,000 sq. ft. of gross floor area
Business park support activities	2 spaces per 1,000 sq. ft. of gross floor area
Convention and Event Center	1 space per 4 seats or per 100 sq. ft. in a main auditorium, whichever is greater
Day care facility	1 space per 5 persons care capacity
Data center	1 space per 1,000 sq. ft. of gross floor area
Filing station	4 spaces per 1,000 sq. ft. of gross floor area plus 1 per service stall
Funeral home or crematorium	1 space per 50 square feet of floor space in slumber rooms, parlors, or individual funeral service rooms
Garden material sales	1 space per 1,000 sq. ft. of gross floor area
Grocery store	3 spaces per 1,000 sq. ft. of gross floor area
Golf course	2.5 spaces per 1,000 square feet of clubhouse area
Hotel or motel	2 spaces per 3 guest rooms plus 1 per 200 sq. ft. of gross floor area in all accessory uses including restaurants and meeting rooms
Indoor entertainment facility	2.5 spaces per 1,000 sq. ft. of gross floor area.
Kennel	1 space per 1,000 sq. ft. of gross floor area
Marina or yacht club	2.5 spaces per 1,000 sq. ft. of clubhouse area, plus 1 per 10 boat slips
Mini-storage facility	1 space per 20 storage units
Office	2.5 spaces per 1,000 sq. ft. of gross floor area
Parking lot or parking structure (primary use)	No requirement
Personal service or repair	2.5 spaces per 1,000 sq. ft. of gross floor area
Preschool	1 space per 5 persons care capacity
Restaurant	56.5 spaces per 1,000 sq. ft. of gross floor area
Retail store	3 spaces per 1,000 sq. ft. of gross floor area
Riding stable	No requirement
Seasonal camp or cabin	1 space for every two beds, or for each cabin or sleeping unit, whichever is greater
Theater	1 space per 6 seats or per 100 sq. ft. in main auditorium, whichever is greater
Tourist or trailer camp	2 spaces per 3 sleeping rooms, suites, or trailer spaces
Truck or heavy vehicle sales, rental, repair, or storage	1 space per 1,000 sq. ft. of gross floor area
Veterinarian or animal hospital	2.5 spaces per 1,000 sq. ft. of gross floor area
Other commercial use not listed	As determined by land use supervisor based on anticipated use and neighborhood impacts
INDUSTRIAL USES	
Airport and related facilities	As determined by airport management

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Table 50-24-1: Off-Street Parking Spaces Required

Use	Requirement* (May Be Adjusted to 30% Less or 50% More)
Electric power or heat generation plant; Electric power transmission line; Junk and salvage services; Major utility or wireless communication tower; Radio or television broadcasting tower; Railroad or shipyard and related facilities; Solar or geothermal power facility (primary use); Truck freight or transfer terminal; Water or sewer works; Wind power facility (primary use); and Bulk storage not listed	No requirement
Contractor's shop and storage yard; Dry cleaning or laundry plant; Recycling collection point (primary use); and Solid waste disposal or processing facility	1 per 1,000 sq. ft. of gross floor area
Manufacturing, light; Manufacturing, heavy; Manufacturing, hazardous or special; Storage warehouse; Water-dependent manufacturing, light or heavy; and Wholesaling	1 per 1,000 sq. ft. of gross floor area
Research laboratory	As determined by land use supervisor based on anticipated use and neighborhood impacts
Other Industrial uses not listed	As determined by land use supervisor based on anticipated use and neighborhood impacts
ACCESSORY USES	
Accessory bed and breakfast	1 space for primary use dwelling; plus 1 space per habitable unit
Accessory caretaker quarters	1 space
All other accessory uses	No requirement
TEMPORARY USES	
Temporary real estate sales office	2 spaces
All other temporary uses	No requirement

*The Parking Space Requirement May be Modified by Section 50-18.5 (Higher Education Overlay District), Section 50-24.3 (Adjustment to Required Off-Street Parking), and 50-24.4 (Maximum Parking Spaces)

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Section 2. That Section 50-24.7 of Chapter 50 be amended as follows:

50-24.7 Parking lot design standards.

A. General standards.

The design of required off street parking areas and spaces shall meet the standards shown in Table 50-24-4;

Table 50-24-4: Parking Design Standards		
Parking Space Size*		
Size of Car	Minimum Size of Parking Space	
Small	8.5 ft. x 15 ft.	
Standard	9 ft. x 17 ft.	
Aisle Widths		
Angle of Parking	Minimum Width of Aisle	
	One-Way	Two-Way
Parallel/no parking	11 ft.	21 ft.
30 degree	11 ft.	21 ft.
45 degree	13 ft.	23 ft.
60 degree	18 ft.	24 ft.
75 degree	20 ft.	24 ft.
90 degree	20 ft.	24 ft.
Permitted Percentage of Small Car Spaces (Applies to lots with more than 5 spaces)		
Size of Parking Lot	Maximum Percentage of Small Cars	
6 to 100 spaces	40%	
100 to 149 spaces	45%	
150 or more spaces	50%	
Required Surface Treatment/Paving		
Zone District	Requirement	
All residential district parking areas not in lawful existence on June 1, 2009.	Surfaced in a dust free, hard surface material such as concrete or bituminous, or pervious paving materials, except for rear yards, which may be surfaced in aggregate materials, compressed aggregates or similar surfaces.	
All mixed use and special purpose districts	All parking areas shall be surfaced in a dust free, hard surface material such as concrete or bituminous. Pervious paving material shall be approved by the city engineer.	

*The area set aside for a parking space may encroach beyond the face of a curb a maximum of 1.5 ft., provided that (a) it does not include trees, posts, or other obstructions that would prevent a vehicle from fully utilizing the space, and (b) it is not included in required open space, landscape area requirements, or required pedestrian walkways.

B. Parking lot and driveway entrances.

All parking lot and driveway entrances must conform to the design specification regulations of the city engineer;

C. Snow storage areas.

A portion of the each accessory surface parking area shall be designated for snow storage. The areas required to meet the minimum parking requirements of this Section 50-24 shall not be used for snow storage. Snow storage areas may be landscaped if the vegetation is selected and installed so as not to be harmed by snow storage. Snow storage areas shall not count towards those landscape areas required by Section 50-25 unless it they are integrated with a side or rear buffer required by Section 50-25;

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D. Parking lot walkways.

Each surface parking area that (a) serves a multi-family residential, commercial, public, institutional, civic, or mixed use, and (b) contains 50 or more parking spaces, and (c) contains any parking spaces located more than 300 feet from the front façade of the building shall contain at least one pedestrian walkway from allowing pedestrians to pass from the row of parking furthest from the primary building façade to the primary building entrance or a sidewalk allowing the pedestrian to reach the primary building entrance without crossing additional driving spaces or aisles. The required walkway must be at least five feet wide, shall not be located within a driving aisle, and shall be located in a landscaped island running perpendicular to the primary building façade if possible. If located in a landscaped island, the minimum width of the island shall be increased by five feet to accommodate the walkway without reducing the amount of landscaped area. If any parking space in the parking aisle located furthest from the primary structure is more than 200 feet from the walkway, additional similar walkways shall be required within 200 feet of those spaces. If there is a public sidewalk along the street frontage located within 50 feet of any required walkway, the walkway shall connect to that sidewalk.

E. Tandem or In-Line Parking

Tandem or in-line parking, or other similar arrangements that involve the placement of two or more parking spaces in a row directly behind one another so that one parking space is blocking access for other parking spaces, is not allowed for required off-street parking spaces. This provision does not apply to required off street-parking spaces within enclosed structures, such as garages or parking structures.

Section 3. That Section 50-37.9 of Chapter 50 be amended as follows:

50-37.9 Variance

This section applies to applications for a variance from the terms and provisions of this Chapter. Different types of variances are subject to differing criteria for approval, and in many cases are also subject to limitations on the types of variances that can be granted.

F. Application

An application for a variance shall be filed pursuant to Section 50-37.1.B.

G. Procedure

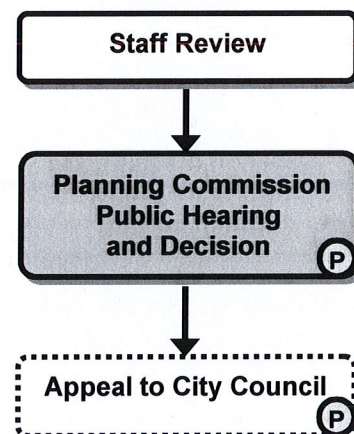
The planning commission shall review the application, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision on the application based on the criteria in subsections 50-37.9.C through M below, as applicable to the specific type of variance being requested. The planning commission may grant a different variance or different form of relief than that requested by the applicant if it determines that the alternative relief better meets the criteria in subsections C through M below. The commission may impose appropriate conditions and safeguards to protect adjacent properties and the public interest, including but not limited to financial security pursuant to Section 50-37.1.P or a development agreement regarding the design, construction and operation of the project, to protect the Comprehensive Land Use Plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the variance will continue to be met. Constructing any improvement or beginning any activity authorized by the variance shall constitute the applicant's agreement to conform to all terms and conditions of the permit.

H. General Variance Criteria

Unless different or inconsistent criteria or limitations are stated in subsections 50-37.9.D through M below for the specific type of variance being requested, the planning commission shall approve an application for a variance, or approve it with conditions, if it finds that the proposed variance meets the following criteria. If there is a direct conflict between a provision or criteria in subsections D through M below and the general criteria in this subsection C, the provisions in subsections D through M shall govern:

1. Because of the exceptional narrowness, shallowness or shape of the applicant's property, or because of exceptional topographic or other conditions related to the property, the strict application of the requirements of this Chapter would result in peculiar and practical difficulties or exceptional or undue hardship to the property owner;

Variance



(P) Indicates Public Hearing Required

4-26

2. The special circumstances or conditions that create the need for relief were not directly or indirectly created by the action or inaction of the property owner or applicant;
3. The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity;
4. The relief is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant;
5. The relief will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety or public welfare of the inhabitants of the city;
6. The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map;
7. The relief does not allow any type of sign that is not allowed in the zone district where the property is located, pursuant to Section 50-27;
8. The relief complies with any additional limitations or criteria applicable to that variance in subsections D through M below.

I. No Use Variances

No variance may be permitted to allow any use that is not listed in Table 50-19.8 as a permitted or special use in the zone district where the property is located, or Table 50-27.4 for a permitted sign in the district where the property is located

J. Variances to Lot Size in Unsewered Areas

A variance from the minimum lot size in unsewered area shall not be granted without presentation of a permit or letter of intent to issue a permit for onsite sewerage treatment from the county.

K. Variances for Two-Family Dwellings in the R-1 District

The commission shall not grant any variance from the requirements for the allowance of two-family dwellings within the R-1 zone district except:

1. A variance from the required front yard setback;
2. A variance reducing the minimum dimensional requirements by up to 10%.

L. Variances From Parking and Loading Regulations

1. Residential Districts

- (a) A variance may be granted to allow parking on a portion of a lot in an R zone where parking is not permitted by Section 50-24.6.B in the following two cases:

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- (i) On any non-corner lot in an R district where the permitted parking area as shown in Table 50-24-3 is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, and the applicant demonstrates hardship;
 - (ii) On any corner lot in an R district where the R district parking area is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, without a showing of hardship.
- (b) The variance shall be subject to the following conditions, and any other conditions determined by the commission to be reasonable and necessary to protect the interests of the abutting property owners and the residential character of the surrounding neighborhood:
- (i) On a non-corner lot with frontage of less than 50 ft., only one parking area may be located outside the R district parking area;
 - (ii) On a corner lot with frontage of less than 50 ft., the variance may allow for compliance with the off street parking requirements of this Chapter;
 - (iii) On a corner or non-corner lot with frontage of 50 ft. or greater, no variance may allow a parking area, including any driveway area leading to it, to exceed an additional 30% of the front yard;
 - (iv) The proposed parking area shall be entirely located on the applicant's lot and shall not encroach across any abutting lot line unless such abutting lot and the subject lot are under the same ownership and the abutting lot is not occupied by a dwelling unit;
 - (v) Where the proposed parking area will encroach into any unimproved area of a street, the variance shall expire upon improvement of the street;
 - (vi) Economic considerations, in whole or part, shall not constitute a hardship.

2. Reducing Required Parking Spaces

Except as provided in 50-37.9.G, variances from the minimum amount of off-street parking required may be approved if a smaller amount of off-site parking will be adequate to meet the needs of the facility because the facility is restricted to occupancy or use by populations with documented lower vehicle uses, such as the elderly or disabled.

3. Exceeding Required Parking Spaces

Variances from the maximum parking limits provided in 50-24.4 shall not exceed ~~175~~200% of the minimum requirement provided in Table 50-24.1

M. Variances to Reduce Setbacks

When the application is for the reduction of a required front, rear or side yard setback, the commission may require the submission of a landscaping and buffering plan, and may require that all required landscaping or buffering, or landscaping and buffering of equal effectiveness, be installed within the reduced setback area. Decorative fencing and decorative wall structures may be proposed where more intense vegetated landscaping will not provide adequate mitigation of impacts on adjacent properties. The commission shall only approve the variance if the landscaping and buffering will mitigate impacts on adjacent properties as effectively as those required by Sections 50-25 and 50-26 of this Chapter.

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20-41

N. Variances in the MU-C District

1. Within the MU-C district, the only variances that may be approved are variations in any dimensional standard in Sections 50-15.3 and 50-21 by no more than 10%. However, if the need for a variance is the result of a government taking pursuant to eminent domain powers, then (a) the limits of this subsection 1.1 shall not apply and (b) all or part of the required landscaping and buffering may be placed in the public right-of-way if the property owner executes a perpetual maintenance agreement with the owner of the right-of-way.
2. In the case of a setback reduction variance, the landscaping and buffering in any reduced setback area shall be at least four ft. in height and screen out at least 50% of the view of any parking area, unless the setback is reduced to less than 5 ft., in which case it shall screen out at least 75% of the view of the parking area.

O. Variances in A-O Airport Overlay District

Variances shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern.

P. Variances from Flood Plain Regulations

Variances to the flood plain regulations in Section 50-18.1.C shall only be granted in compliance with the limitations in this subsection K.

1. **In a floodway:**
 - (a) No variance shall be granted that would result in any increase in flood levels during the base flood discharge;
 - (b) No variance shall authorize the placement of a manufactured home, dwelling unit or any structure designed for human habitation;
 - (c) No variance shall be granted authorizing a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
 - (d) Variances shall be limited to giving the applicant a minimal reasonable use of the site.
2. **In a flood fringe:**
 - (a) No variance shall authorize a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
 - (b) Variances shall not produce any adverse effects to the flood capacity or efficiency of the watercourse.
3. **Flood insurance notice and recordkeeping**

The building official shall notify the applicant for a variance that:

 - (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;
 - (b) Construction below the 100 year or regional flood level increases risks to life and property. Such copy notification shall be maintained with a record of all variance actions. The building official shall maintain a record of all variance actions, including justification for their issuance, and report such variances

66-H

issued in its annual or biennial report submitted to the administrator of the national flood insurance program.

4. General considerations

The city shall consider the following factors in granting variances and imposing conditions on permits and variances in flood plains:

- (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
- (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
- (e) The importance of the services to be provided by the proposed use to the community;
- (f) The requirements of the facility for a waterfront location;
- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the Comprehensive Land Use Plan and flood plain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles; and
- (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.

5. Submittal of hearing and decision notices to the DNR.

- (a) The planning commission shall submit to the commissioner of the DNR a copy of the application for proposed variance sufficiently in advance so that the commissioner will receive at least ten days' notice of the hearing. Such notice shall specify the time, place, and subject matter of the hearing and shall be accompanied by such supporting information as is necessary to indicate the nature and effect of the proposed use. The notice may be sent by electronic mail or U.S. mail to the respective DNR area hydrologist;
- (b) A copy of all decisions granting variances shall be forwarded to the commissioner of the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. mail to the respective DNR area hydrologist.

6. Additional federal emergency management agency conditions

The following additional conditions of FEMA must be satisfied:

- (a) Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
- (b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

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7. Conditions attached to variances

Upon consideration of the factors listed above and the purpose of this Section, the planning commission may attach such conditions to the granting of variances and permits as it deems necessary to fulfill the purposes of this Section. Such conditions may include, but are not limited to, the following:

- (a) Modification of waste treatment and water supply facilities;
- (b) Limitations on period of use, occupancy, and operation;
- (c) Imposition of operational controls, sureties, and deed restrictions;
- (d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures; and
- (e) Floodproofing measures, in accordance with the State Building Code and this chapter. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors.

Q. Standards for Variances in Shorelands

No variance shall be granted that compromises the general purposes or intent of Section 50-18.1.D or results in adverse consequences to the environment. Variances shall include a requirement for the applicant to mitigate the impacts of the variance on shoreland areas.

R. Reconstruction of a Non-Conforming Building

A variance may be granted to permit the reconstruction of a nonconforming building that has been damaged from any cause or has deteriorated to the extent of more than 60 percent of its assessed market value as determined by the city assessor, if the commission determines that it is necessary for the preservation and enjoyment of a substantial property right and is not detrimental to the public welfare of the city.

Section 4. That this ordinance shall take effect 30 days after its passage and publication.
(Effective date: xxxxx, 2014)

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Approved to as form:

Attorney

PLANNING SR

STATEMENT OF PURPOSE:

Action Deadline: Not Applicable

PL: 14-117

DRAFT

11-32